Section 428, Title 31, of the United States Code, relating to the issuance of gold certificates in exchange for gold bullion, provides in part:

> "The bullion deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand."

Section 429 of the same Title, relating to the issuance of gold certificates in exchange for gold coin, contains a similar provision, as follows:

> "* * * and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose."

We submit that reference to these statutes, the gold certificates and the statement of facts in the petition, admitted by the Government by virtue of its demurrer, as well as the ruling in *Bank of Boston* v. *United States*, 10 Court of Claims 519, affd. 96 U. S. 30, conclusively establishes the inapplicability of the *Woodruff Case, supra.*

The decision of the Supreme Court in *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, is also clearly irrelevant. The Court there upheld the Minnesota Mortgage Law which did not in any wise involve the taking of property by the Government.

The reservation to the Legislature of the sovereign power to alter or amend contracts, upheld in said decision, in no wise permits the Government to repudiate or appropriate its own agreements without just compensation. The cases cited in Point II of this memorandum fully demonstrate that the Government, even when exercising a sovereign power, is obliged to make just compensation for any contract taken by it in the exercise of such power, and that the power to alter or amend agreements does not imply the power to condemn or repudiate contracts solemnly made by it.

On this point, see also: *Shields* v. *Ohio*, 95 U. S. 319, 24 L. Ed. 357-9; Sinking Fund Cases, 99 U. S. 700.

That the reservation of the power to alter or amend does not imply the power to repudiate or condemn, even though the original agreement is made with the United States Government, was distinctly pointed out by Mr. Justice Strong in the Sinking Fund Cases, 99 U. S. 700, 25 L. Ed. 506; (p. 732):

> "* * * it is as much beyond the power of a legislature under any pretense, to alter a contract into which the government has entered, with a private individual, as it is for any other party to a contract to change its terms without the consent of the person contracting with him. *As to its contract the government in all its departments has laid aside its sovereignty, and it stands on the same footing with private contractors.*" (italics ours)

United States, et al. v. *Bankers Trust Co., et al.*, Docket Nos. 471, 472, and *Norman* v. *Baltimore & Ohio R. R. Co.*, Docket No. 270, are clearly distinguishable from the case at bar, and the decisions in said cases will be in no wise applicable. Those cases involve the constitutionality of Public Resolution No. 10 (now Section 463, Title 31, U. S. C. A.), passed by Congress on June 5, 1933. Public Resolution No. 10 does not involve a repudiation by the Government of its own contracts, nor does it involve a condemnation by the Federal Government of property of residents of this country. The said Resolution did not effect a direct appropriation by the Government of properties belonging to individuals. The creditors in said cases suffered consequential injuries as a result of the exercise by the Government of its undoubted constitutional right to regulate the currency.

Those suits involve a statement of facts analogous to those involved in *L. & N. R. Co.* v. *Mottley* (1911), 219 U. S. 467, 34 L. R. A. (N.S.) 671; and *Mondou* v. *New York, N. H. & H. R. R. Co.* (1912), 223 U. S. 1, 38 L. R. A. (N. S.) 44; where the Court upheld legislation which resulted in a modification or abrogation of private contracts as a result of an enactment passed by Congress in the exercise of a power given to it, to wit, the power to regulate interstate commerce.

The reservation of this power, however, in no wise permits the Government to repudiate or appropriate agreements without just compensation. The cases heretofore cited in this memorandum fully demonstrate that the defendant, even when exercising a sovereign power, is obligated to make just compensation for any contract taken by it in the exercise of such power.

CONCLUSION.

We submit that the authorities cited and quoted in this brief indubitably sustain the following propositions:

(1) that, on January 17, 1934, plaintiff, by virtue of his possession of the gold certificates, Series of 1928, mentioned in the petition herein, was the holder of an express contract, whereby the United States in its corporate or proprietary capacity agreed to pay to him, upon the tender of his gold certificates, gold coin of the value of $170,634.07;

(2) that having expropriated this property by virtue of the Emergency Banking Act of March 9, 1933 and the decree of the Secretary of the Treasury of December 28, 1933 issued thereunder, the defendant was obliged to pay to petitioner just compensation for the property thus taken;

(3) that the payment to claimant, in exchange for his gold certificates of the nominal value of $106,300, of the sum of $106,300 in currency, not redeemable in gold, was not just compensation;

(4) that the petitioner herein is entitled to receive a further, sum, to wit, $64,334.07, representing the difference between the market price on January 17, 1934 of the gold that petitioner was entitled to receive and the face amount of the currency actually paid to the petitioner and received by him under protest;

(5) that, since the refusal of the defendant to pay petitioner the gold coin that was due constituted a breach of an express agreement between petitioner and the defendant, petitioner's action is properly maintainable in the Court of Claims.

It follows that all of the questions certified to this Court by the Court of Claims should be answered in the affirmative.

Respectfully submitted,

OTTO C. SOMMERICH,

Attorney for Plaintiff.

MAXWELL C. KATZ
OTTO C. SOMMERICH
RAYMOND T. HEILPERN

Of Counsel.

APPENDIX

TITLE 31. U. S. CODE ANNOTATED. MONEY AND FINANCE

*** Ch. 8. Coins, Coinage and Currency.

§ 314. *Standard unit of value.*—The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. (R.S. § 3511; Mar. 14, 1900, c. 41, § 1, 31 Stat. 45.)

§ 428. *Gold certificates in exchange for gold bullion.*—The Secretary of the Treasury is authorized to receive deposits of gold bullion with the Treasurer or any agencies designated under section 476 of this title, in sums not less than $20, and to issue certificates therefor, in denominations of not less than $20 each, corresponding with the denominations of the United States notes. The bullion deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand. And certificates representing coin in the Treasury may be issued in payment of interest on the public debt, which certificates, together with those issued for coin and bullion deposited, shall not at any time exceed 20 per centum beyond the amount of coin and bullion in the Treasury (R.S. § 254).

§ 429. *Deposits of gold coin; gold certificates.*—The Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer, or any of the agencies designated under section 476 of this title, in sums of not less than $20, and to issue gold certificates therefor in denominations of not less than

$10, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates when received for customs, taxes, and all public dues may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided,* That whenever and so long as the gold coin and bullion held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below $100,000,000 the authority to issue certificates as herein provided shall be suspended: *And provided further,* That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed $60,000,000 the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further,* That of the amount of such outstanding certificates one fourth at least shall be in denominations of $50 or less: *And provided further,* That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of $10,000, payable to order: *And provided further,* That the Secretary of the Treasurer[1] may, in his discretion, receive, with the agencies designated under section 476 of this title, in New York and in San Francisco, deposits of foreign gold coin at their bullion value in amounts of not less than $1,000 in value and issue gold certificates therefor of the description herein authorized: *And provided further,* That the Secretary of the Treasury may, in his discretion, receive, with the Treasurer or any agencies designated under section 476 of this title, deposits of gold bullion bearing the stamp of the coinage mints of

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[1] "Treasurer" should be "Treasury."

the United States, or the assay office in New York, certifying their weight, fineness, and value, in amounts of not less than $1,000 in value, and issue gold certificates therefor of the description herein authorized.

But the amount of gold bullion and foreign coin so held shall not at any time exceed two thirds of the total amount of gold certificates at such time outstanding. (R.S. §254; July 12, 1882, c. 290, §12, 22 Stat. 165; Mar. 14, 1900, c. 41, §6, 31 Stat. 47; May 26, 1906, c. 2558, 34 Stat. 202; Mar. 4, 1907, c. 2913, §1, 34 Stat. 1289; Mar. 2, 1911, c. 190, 36 Stat. 964; June 12, 1916, c. 142, 39 Stat. 225; May 20, 1920, c. 214, §1, 41 Stat. 654.)

[PUBLIC LAW—NO. 1—73D CONGRESS]
(H. R. 1491)

AN ACT To provide relief in the existing national emergency in banking, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders, and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations. Upon receipt of such coin, gold bullion, or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the

Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations, and restrictions as may be prescribed by the Secretary of the Treasury, with approval of the President. Any individual, partnership, corporation, or association, or any director, officer, or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

[PUBLIC RESOLUTION—NO. 10—73D CONGRESS]

(H. J. RES. 192)

JOINT RESOLUTION To assure uniform value to the coins and currencies of the United States

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the or-

derly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Approved, June 5, 1933, 4:40 p.m.

ORDER OF THE SECRETARY OF THE TREASURY REQUIRING THE DELIVERY OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES TO THE TREASURER OF THE UNITED STATES (DECEMBER 28, 1933)

WHEREAS Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking, and for Other Purposes", provides in Subsection (n) as follows:

> Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals,

partnerships, associations, and corporations. Upon receipt of such gold coin, gold bullion, or gold certificates, the Secretary of the Treasury shall pay therefore an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise.

and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., ACTING SECRETARY of the TREASURY, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States.

SECTION 2. *Delivery.*—The gold coin, gold bullion, and gold certificates herein required to be paid and delivered to the Treasurer of the United States shall be delivered by placing the same forthwith in the custody of a Federal reserve bank or branch or a bank member of the Federal Reserve System for the account of the United States and by forwarding confirmation that the gold coin, gold bullion, and gold certificates have been so placed in custody for the account of the United States and are held subject to the order of the Treasurer of the United States, signed by such bank and the person making the delivery (or the authorized agent of such person) to the Treasurer of the United States, Washington, D. C., in a postage prepaid envelope bearing a

postmark dated prior to midnight of the day the gold coin, gold bullion, and gold certificates are so placed in custody.

SECTION 3. *Payment and Reimbursement of Costs.*—Upon receipt of the confirmation signed and delivered as required under Section 2, the Secretary of the Treasury will pay for the gold coin, gold bullion, and gold certificates placed in custody for the account of the United States in accordance with Section 2, an equivalent amount of any form of coin or currency, coined or issued under the laws of the United States, designated by the Secretary of the Treasury. The Secretary of the Treasury will pay all costs of the transportation of such gold coin, gold bullion, and gold certificates to the Federal reserve bank or branch or bank member of the Federal Reserve System in the city or town nearest to the place where such gold coin, gold bullion, and gold certificates are now situated, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Persons desiring reimbursement for such costs actually incurred shall submit their accounts on voucher forms which may be obtained by writing to the Treasurer of the United States, Washington, D. C.

SECTION 4. *Definitions.*—As used in this Order, the term "person" means any individual, partnership, association, or corporation; the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "gold coin" means any coin containing gold, including foreign gold coin; and the term "gold bullion" means any gold which has been put through a process of smelting or refining that is in such form that its value depends upon

the gold content and not upon the form, but does not include gold coin or metals containing less than five troy ounces of fine gold per short ton.

SECTION 5. Any individual, partnership, association, or corporation failing to comply with any requirement hereof or of any rules or regulations issued by the Secretary of the Treasury hereunder shall be subject to the penalty provided in Section 11 (n) of the Federal Reserve Act, as amended.

This order may be modified or revoked at any time.

H. MORGENTHAU, JR.,

Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE

December 28, 1933.

ORDER OF THE SECRETARY OF THE TREASURY SUPPLEMENTING THE ORDER OF DECEMBER 28, 1933, REQUIRING THE DELIVERY OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES TO THE TREASURER OF THE UNITED STATES (JANUARY 15, 1934)

WHEREAS on December 28, 1933, I, HENRY MORGENTHAU, JR., as ACTING SECRETARY of the TREASURY, issued an Order under authority of Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for Other Purposes";

WHEREAS said Order, as amended by an Order of January 11, 1934, required every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognizezd special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces, unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design, and struck by the same mint);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated

in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States;

WHEREAS a reasonable time has elapsed within which any person required to deliver gold coin, gold bullion, and gold certificates could pay and deliver to the Treasurer of the United States in the manner provided in said Order of December 28, 1933, the gold coin, gold bullion, and gold certificates situated in the United States, owned by such person; and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., SECRETARY of the TREASURY, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin, gold bullion, or gold certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 193, as amended.

In the event that any gold coin, gold bullion, or gold certificates withheld in noncompliance with said Order and of this Order are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any

such coin, bullion, or certificates after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11 (n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

The definitions of the terms "person", "United States", "gold coin", and "gold bullion" contained in Section 4 of said Order of December 28, 1933, apply equally to such terms as used in this Order.

H. MORGENTHAU, JR.,

Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE

January 15, 1934.

FILE COPY

JAN 7 1935

CHARLES ELMORE CROPLEY

No. 531

Supreme Court of the United States

OCTOBER TERM, 1934

F. EUGENE NORTZ

vs.

THE UNITED STATES

PLAINTIFF'S REPLY BRIEF

OTTO C. SOMMERICH,
Solicitor for Plaintiff.

MAXWELL C. KATZ,
OTTO C. SOMMERICH,
RAYMOND T. HEILPERN,
of Counsel.

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the Government—whether plaintiff received just compensation for his $106,300 of gold certificates, when he was paid and received under protest $106,300 of lawful currency not redeemable in gold.[1]

The petition herein alleged that, on January 17, 1934, the date of plaintiff's tender, and for some time prior and subsequent thereto, an ounce of gold was of the value of at least $33.43 (R. 2). A statement in a pleading as to the value of an article is a statement of fact (*Prendergast* v. *New York Telephone Co.*, 262 U. S. 43, 47, 43 S. Ct. 466).

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[1] In attempting to reply to the argument, advanced in the brief of Grandin Tracy Vought as *amicus curiae*, that gold certificates are warehouse receipts issued by the Government, defendant omits a material portion of the debate in the House of Representatives on the Act of March 3, 1863. A portion of the debate which follows immediately after that quoted in defendant's brief is significant:

> "MR. PENDLETON. Suppose a man takes $100 in gold and deposits it in the Treasury, there is authority here for the Secretary of the Treasury to issue a certificate for $120.
>
> MR. HOOPER. Oh, no; there is authority for the Secretary to issue a certificate for $100, the amount deposited. If ten dollars of interest becomes due, of course the individual could demand that interest in gold; but instead of handing over that gold and receiving it immediately back again, the Secretary may issue a certificate for ten dollars.
>
> MR. PENDLETON. I submit that the amendment does not carry out the idea the gentleman has just stated. The amendment says that the certificates which are issued in payment of the public debt, and are represented by eighty per cent. of their amount in coin in the Treasury, shall, together with the certificates given for gold and bullion deposited, not exceed, at any time, twenty per cent. of the coin and bullion in the Treasury.
>
> If I comprehend correctly the amendment offered by my colleague from Ohio, it does not carry out the idea which the gentleman from Massachusetts has just stated, and which, I presume, was intended to be incorporated in it.
>
> But I am opposed to the whole scheme; and I do not think it legitimately belongs to this bill. I can see no good reason

Therefore, by demurring to the petition herein, the Government has conceded the value of gold as stated therein (R. 3).

Irrespective of this technical position, however, we submit that the truth of the statement contained in the petition is fully substantiated by reference to the records of contemporaneous gold transactions.

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why the Treasury of the United States should become the depository of the gold belonging to private individuals of this country, and the Government take upon itself the care and custody thereof, while they put out these certificates certifying that it is in the Treasury. Why is it necessary to withdraw that gold and silver from circulation, deposit it in your Treasury, and have it represented by these notes? If that system is to be fairly carried out as prescribed in this amendment, the money will remain in the place of deposit until these certificates shall come home for redemption. That will not increase in any wise the revenues of the Government. It gives no advantage to the Government. The Government receives nothing for the responsibility, the care and the trouble of the custody of this money.

I submit, therefore, that the whole amendment, being founded upon a proposition to do that which there is no necessity of doing, and for the doing of which no benefit accrues to the Government, and the doing of which imposes great expense and trouble on the Government, ought to be rejected."

It is thus apparent, as indicated by the remarks made by the Congressmen at the time, that the purpose of the Act was to empower the Government to serve as custodian of gold and gold coin *belonging* to the depositor, for which the United States was to issue receipts in the form of gold certificates.

The provision authorizing the issuance of certificates for interest for an additional 20% in no wise affects the conclusion. Neither the Act nor the debate justifies a claim that these additional certificates were to be gold certificates redeemable out of the coin or bullion placed in safe-keeping with the United States. The obvious intent of the clause was to use the gold thus deposited as a yardstick to measure the amount of interest certificates that the Secretary of the Treasury might issue.

In his radio address from the White House on October 22, 1933, President Roosevelt announced:

> "As a further effective means to this end, I am going to establish a Government market for gold in the United States. Therefore, under the clearly defined authority of existing law, I am authorizing the Reconstruction Finance Corporation to buy gold newly mined in the United States at prices to be determined from time to time after consultation with the Secretary of the Treasury and the President. *Whenever necessary to the end in view, we shall also buy or sell gold in the world market.*" (italics ours)

In October 1933, pursuant to this announced policy, the United States Government purchased gold, both here and abroad, its purchases here, however, being confined to gold newly mined in the United States. Said purchases, beginning on October 25th, were made by the Reconstruction Finance Corporation, and later by the New York Federal Reserve Bank, at prices ranging between $33.36 per ounce on October 25, 1933 and $34.45 per ounce on January 19, 1934. The price paid by the United States Government for such gold on

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Regardless of whether or not this interpretation is correct, the Act of March 14, 1900 as amended (the Act under which the certificates in question were issued) superseded the Act of March 3, 1863, and provided in part:

> "* * * and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose."

Furthermore, the footnote on page 7 of the Government's brief illustrates that gold certificates are considered as equivalent to gold itself for either may be held as reserve against the issuance of Federal Reserve Notes.

January 17, 1934, the date of plaintiff's tender, was $34.45.[2]

Despite these indisputable facts, the Government contends in this Court that, at the time in question, there was no market for any gold other than newly mined gold or gold held for commodity purposes under a license issued by the Secretary of the Treasury.

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[2] The above statements are based upon the reports contained in the "Financial Chronicle."

According to the same publication, the London open market gold price during the period in question was generally slightly below the price bid by the above-mentioned agencies of the Government. On January 17, 1934, said London open market gold price was 131s. 6d., or $33.43 per ounce.

A statement of the London open market gold price and the price paid for gold by the United States during the period from December 20, 1933 to January 26, 1934, is set forth below. Said table conclusively establishes the truth of the allegation of value contained in the petition:

Date		London Open Market Gold Price	Price Paid for Gold by U. S. (Reconstruction Finance Corp.)
1933			
Wed., Dec.	20	126s. 9d.	$34.06
	21	126s. 2d.	34.06
	22	126s. 3d.	34.06
Sat.	23	126s. 5d.	34.06
	25 & 26	Holiday ..... Dec. 26	34.06
	27	126s. 5d.	34.06
	28	126s. 3d.	34.06
	29	126s. 2d.	34.06
	30	126s. d.	34.06
1934			
Mon., Jan.	1	Holiday	
	2	127s.	34.06
	3	127s. 6d.	34.06
	4	127s. 6d.	34.06
	5	127s. 6d.	34.06

Gold has an intrinsic value and is bought and sold in the world markets.[3]

Since gold has this intrinsic value, it is patently absurd to contend that gold in London or any other place outside of the United States and newly mined gold has a value in excess of $30.00 per ounce and that gold in this country held by residents thereof is worth no more than $20.67 per ounce. Neither Legislative nor Executive fiat can accomplish such a feat.

Gold is gold, whether newly mined or centuries old. Gold in New York, disregarding the cost of transporta-

Date		London Open Market Gold Price	Price Paid for Gold by U. S. (Reconstruction Finance Corp.)
1934			
	Jan. 6	126s. 11d.	34.06
Mon.	8	126s. 8d.	34.06
	9	126s. 8½d.	34.06
	10	127s. 1d.	34.06
	11	127s. 1d.	34.06
	12	127s. 2d.	34.06
	13	127s. 2d.	34.06
Mon.	15	128s. 6d.	34.06
Tues.	16	131s. 9d.	34.45†
	17	131s. 6d.	34.45
	18	132s. 10d.	34.45
Fri.	19	132s. 10d.	34.45
	20	132s. 9d.	34.45
Mon.	22	132s. 11d.	34.45
	23	132s. 9d.	34.45
	24	132s. 10d.	34.45
	25	132s. 1d.	34.45
	26	132s. 8d.	34.45

[3] This is evidenced by the price quotations from the "Financial Chronicle" set forth at pp. 5, 6.

† N. Y. Federal Reserve Bank superseded the R. F. C. beginning with Tuesday, Jan. 16, 1934.

tion, is of the same value as gold in London. Therefore, the gold to which plaintiff was entitled upon the redemption of his gold certificates had the value set forth in the petition herein.

It is the portion of the legislation and Executive Orders that attempts to disregard the actual market price of gold and to fix an arbitrary value much less than the market value, which, we contend, is the vice inherent in the whole of the legislation, as thereby the defendant herein seeks to repudiate its agreement and condemn property without payment of just compensation.

The figures above given establish that in the world market gold, on January 17, 1934, had a value of at least $33.43 an ounce and that the defendant itself was, on that date, through its agencies, purchasing gold not newly mined at $33.45 an ounce.

Defendant contends, however, that, by virtue of the Emergency Banking Act of March 9, 1933 and the Presidential Orders issued thereunder, plaintiff herein did not have the free right of disposal of his gold certificates or of the gold to which he was entitled upon his surrender thereof. Defendant states that the only action which he could have taken with reference to said gold or gold certificates was to deliver same to the Government and receive in exchange currency of the nominal value of $106,300, not redeemable in gold.

The consequences of upholding such a contention would, indeed, be far-reaching. During the war, the Government commandeered the total output of many factories manufacturing products needful for war purposes. Could it be successfully maintained that, if the Government had attempted to assert the right to fix the price which it would pay for the materials thus com-

mandeered, it could have upheld such action by stating that the factory could not lawfully have disposed of its produce to any other person and, therefore, the price offered by the Government was the sole price obtainable? The decision of this Court in *New River Collieries Co.* v. *United States*, 262 U. S. 341, 43 S. Ct. 565, answers this question in the negative.

We can easily visualize a situation under present conditions where the Congress might conceivably prohibit the sale of a stable article of commerce, like cotton, except to the United States Government. The Government might then state that it would pay 5c a pound for the cotton tendered to it. We are unable to believe that this Court would uphold such legislative and executive action as establishing the just compensation to be paid to the owners of such cotton by the defendant. The reduced value (assuming a market value in excess of 5c a pound) would result from the taking, and this Court has but recently held in a condemnation case:

> "But the value to be ascertained does not include, and the owner is not entitled to compensation for, any element resulting subsequently to or because of the taking." (*Olson* v. *United States*, 292 U. S. 246, 54 S. Ct. 704, 709.)

Simple justice requires that the converse to this proposition—that the owner is not obliged to suffer any loss resulting subsequently to or because of the taking—must be true.

We respectfully submit that the market value of gold on January 17, 1934, by the pleading and by outside proof, has been definitely fixed at not less than $33.43 an ounce. This finding necessarily establishes defend-

ant's legal liability to plaintiff for the additional sum demanded in the petition filed in the Court of Claims, for the reasons set forth in our main brief herein.

Respectfully submitted,

OTTO C. SOMMERICH,
Attorney for Plaintiff.

MAXWELL C. KATZ
OTTO C. SOMMERICH
RAYMOND T. HEILPERN
Of Counsel.

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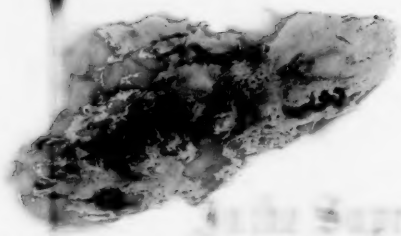

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 531

F. EUGENE NORTZ

v.

UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The Court of Claims has rendered no opinion.

JURISDICTION

The certificate of the Court of Claims was filed November 16, 1934. The jurisdiction of this Court rests upon Section 3 (a) of the Act of February 13, 1925, chapter 229, 43 Stat. 936, 939.

QUESTIONS PRESENTED

The questions certified by the lower court are as follows:

> 1. Is an owner of gold certificates of the United States, Series of 1928, not holding a Federal license to acquire or hold gold coins

or gold certificates, who, on January 17, 1934, had surrendered his certificates to the Secretary of the Treasury of the United States under protest and had received therefor legal tender currency of equivalent face amount, entitled to receive from the United States a further sum inasmuch as the weight of a gold dollar was 25.8 grains, nine-tenths fine, and the market price thereof[1] on January 17, 1934, was in excess of the currency so received?

2. Is a gold certificate, Series of 1928, under the facts stated in question 1 an express contract of the United States in its corporate or proprietary capacity which will enable its owner and holder to bring suit thereon in the Court of Claims?

3. Do the provisions of the Emergency Banking Act of March 9, 1933, and the Order of the Secretary of the Treasury dated December 28, 1933, requiring the plaintiff as owner of gold certificates as stated in question 1 to deliver the same to the Treasury of the United States in exchange for currency of an equivalent amount, not redeemable in gold, amount to a taking of property within the meaning of the Fifth Amendment to the Constitution of the United States?

[1] The phrase "market price thereof" must be construed as meaning "market price of newly mined gold and of gold held for commodity purposes under a license issued by the Secretary of the Treasury," as there was no market for any other gold. (See pp. 8, 24–25, *infra*). The Court will take judicial notice of these facts.

STATUTES, ORDERS, AND REGULATIONS INVOLVED

The Emergency Banking Act of March 9, 1933, Title III of the Act of May 12, 1933, the Gold Reserve Act of 1934, the Presidential Proclamations, Executive Orders, and Orders and Regulations of the Secretary of the Treasury issued thereunder, are set forth in the Appendix to this brief filed under separate cover.

The provisions of the statutes other than the recent monetary legislation just referred to are set forth in the Appendix hereto.

STATEMENT

The plaintiff filed this action under Section 145 of the Judicial Code. It is brought on gold certificates of the United States for the recovery of the difference between the alleged market value of the amount of *gold* said to be represented by the certificates and the nominal or face value of the certificates. The petition alleges the following as facts:

For a long time prior to January 17, 1934, the plaintiff was the owner and holder of gold certificates, Series of 1928, of the United States of the face amount of $106,300 (Ctf. 1). During that entire period the weight of a gold dollar was 25.8 grains of gold, .9 fine (Ctf. 2). On January 17, 1934, the plaintiff presented such gold certificates and demanded that they be redeemed in gold coin

(Ctf. 2). At that time the value of an ounce of gold was $33.43 (Ctf. 2). The defendant refused to comply with the demand (Ctf. 2) but paid to the plaintiff in exchange for the gold certificates the sum of $106,300 in currency of the United States, which the plaintiff accepted under protest (Ctf. 3).

The plaintiff claims damages in the amount of $64,334.07, which is the difference between the alleged market value of the amount of gold asserted to be represented by the certificates at the time of their surrender on January 17, 1934, and their face amount (Ctf. 3).

The defendant demurred to the petition on the ground that it does not state a cause of action against the United States.

In addition to the foregoing alleged facts, the petition likewise contains certain conclusions of law, which, of course, are not admitted by the demurrer. Thus, the plaintiff places his own interpretation on the tenor of gold certificates (Ctf. 1). He alleges that by virtue of the agreement represented by the gold certificates he was entitled to receive one ounce of gold for each $20.67 of gold certificates. He alleges that the orders of the Secretary of the Treasury requiring the surrender of gold coin and gold certificates are invalid, and that the laws under which such orders were issued are unconstitutional (Ctf. 2).

Without passing upon the defendant's demurrer, the Court of Claims certified to this Court the questions stated above.

The record does not disclose the date upon which the plaintiff acquired his gold certificates, the petition averring merely that "for a long time prior to January 17, 1934, the plaintiff was the owner and holder" of the gold certificates upon which the suit is brought.

The Government's brief in *United States* v. *Bankers Trust Company,* Nos. 471 and 472, contains much discussion applicable to the issues in this case and it is hereby incorporated in this brief.

RECENT MONETARY LEGISLATION AND EXECUTIVE ACTION

The abandonment of the gold standard by foreign countries, the disastrous economic condition that confronted this country and the rest of the world in the Spring of 1933, the chaotic banking situation resulting in heavy runs on banks throughout the United States in February, 1933, and their consequent closing, have been reviewed in the brief in Nos. 471 and 472. (See pages 28–44.) Swift and energetic measures were essential in order to save the country from a financial panic and an economic collapse.

The steps that were taken by the Congress and the Executive are also summarized in the companion brief (pp. 101–114).

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In that brief there is also reviewed the development of our monetary system, particularly with reference to the events of recent years. The discussion (pages 19–67) bears upon the problem of the gold certificate quite as much as upon the problem of the gold clause in private obligations. It is there demonstrated that in March, 1933, it was essential for the United States to check the withdrawals of gold because of the drain that was being exerted upon the monetary stocks, and also to combat the deflationary effect which resulted from the fact that the United States alone among the important commercial powers of the world was still endeavoring to maintain the prewar gold parity of its monetary unit.

The brief does not question the authority of the United States under the circumstances existing in 1933 and the early part of 1934 to require the delivery to the United States of gold coin, gold bullion, and gold certificates. (See pages 10 and 15.)

The constitutionality of the Emergency Banking Act of March 9, 1933, was upheld in *Campbell* v. *Chase National Bank,* 5 F. Supp. 156. (S. D. N. Y.)

After April 5, 1933, gold coin, gold bullion, and gold certificates in amounts exceeding $100 in the aggregate belonging to any one person, were required to be delivered to the Federal Reserve banks.[2] After August 28, 1933, gold coin and gold

[2] The claimant asks why gold certificates were required to be delivered to the Federal Reserve banks when other

certificates in any amount, however small, could be acquired only under license issued by the Secretary of the Treasury, while the order of the Secretary of the Treasury of December 28, 1933, required the delivery to the Treasurer of the United States of all gold coin and of all gold certificates not held under license or by the Federal Reserve banks.[3]

The Executive order of April 20 and later the Executive order of August 28, 1933, prohibited the export of gold coin, gold bullion, and gold certificates except under license for purposes not relevant to the present case. Gold newly mined in the

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forms of currency were not. Finding no reason, he concludes that gold certificates are superior to other forms of currency and that as a holder of gold certificates he is entitled to greater consideration than the holders of other money of the United States. In view of the fact that the Federal Reserve Act required Federal Reserve banks to maintain, as against Federal reserve notes, a 40% reserve consisting of gold or *gold certificates*, simultaneous withdrawals of gold, gold certificates, and other currency on a large scale tended to deplete the reserves at the very time when they were most needed to serve as a base for the additional currency. The necessity for the surrender of gold certificates, therefore, arose from the need to restore the reserves rather than from any notion that there was any inherent difference between gold certificates and other types of paper currency (see brief in cases Nos. 471 and 472, pp. 39–41, and p. 54 footnote).

[3] There are numerous minor exceptions, especially relating to gold intended for industrial uses, which need not be discussed. They are referred to in the brief in Nos. 471 and 472, pp. 41–44, 101–114, and are set out in the separate appendix.

United States was permitted to be sold at prices corresponding to the price of gold in the free gold markets of the world outside of the United States.

The purpose and effect of the various orders above mentioned was to maintain the parity of all forms of currency and coin of the United States (see brief in Nos. 471 and 472, pages 24 to 28).

In the first question certified by the Court of Claims, reference is made to the market value of gold as being in excess of the statutory value of $20.67 an ounce. The Court of Claims presumably referred to the fact that newly mined gold and gold held under license for industrial uses might under certain circumstances be disposed of at a price in excess of $20.67 an ounce. The allegation in plaintiff's petition as to the "market value" of gold, if understood as referring to the value of gold in plaintiff's hands, is a conclusion of law—not of fact. As shown in the brief in Nos. 471 and 472 (pp. 131–4), there was no free market for gold, but only a limited market for newly mined gold and gold held under license for industrial use. The question must be interpreted as referring to this limited market. The plaintiff, however, had no license either to hold or to acquire gold. Had the plaintiff held any gold or gold coin, he would have been obliged to exchange it, just as he was obliged to exchange his gold certificates. In the hands of persons like the plaintiff, who did not possess a

license to acquire, to hold, or to export gold, gold coin was worth its face amount and gold bullion $20.67 an ounce.

CURRENCY OF THE UNITED STATES

It may be helpful to give a brief summary of the various types of currency circulating in the United States prior to January 17, 1934.

The money of account of the United States is expressed in dollars and decimal parts thereof.[4] The standard unit of value, with reference to which all forms of coin or currency have been maintained at a parity, is a dollar consisting of a specified weight of gold. For many years prior to January 31, 1934, this standard unit consisted of 25.8 grains of gold, nine-tenths fine.[5]

(*a*) UNITED STATES NOTES AND TREASURY NOTES OF 1890

The oldest type of currency now in circulation is that known as United States notes. They were first issued during the Civil War.[6] Under the colloquial name of "greenbacks" or "legal tenders", they made an important impression on financial

[4] Act of April 2, 1792, c. 16, Sec. 20, 1 Stat. 250; R. S. Sec. 3563.

[5] March 14, 1900, c. 41, Sec. 1, 31 Stat. 45; R. S. Sec. 3511.

[6] Feb. 25, 1862, c. 33, Sec. 1, 12 Stat. 345; July 11, 1862, c. 142, Sec. 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 822–823; March 3, 1863, c. 73, Sec. 3, 12 Stat. 710; June 20, 1874, c. 343, Sec. 6, 18 Stat. 124; May 31, 1878, c. 146, 20 Stat. 87; Act March 4, 1907, c. 2913, Sec. 2, 34 Stat. 1289; R. S. Secs. 3571, 3583.

history. They assisted in financing the operations of the Civil War and supplied a much-needed medium of exchange, and subsequently they were for a considerable period the center of controversy until they became redeemable in specie. From the first, they were legal tender for payment of all debts, public and private, except duties on imports and interest on the public debt.[7]

Another series of notes is that known as "Treasury Notes of 1890" originally issued in payment for silver bullion purchased under the Act of July 14, 1890. They have been in process of retirement for many years and only a few remain outstanding. They have been legal tender for all debts, public and private, except where otherwise expressly stipulated in the contract.[8]

The Secretary of the Treasury is required to maintain a reserve in gold of $150,000,000 against outstanding United States notes and Treasury notes of 1890.[9]

(*b*) GOLD CERTIFICATES

Since the Civil War, the Secretary of the Treasury has received authorization to accept deposits of gold coin and gold bullion and to issue gold certifi-

[7] Until recently, most five-dollar bills in circulation were "United States notes."

[8] July 14, 1890, c. 708, Sec. 2, 26 Stat. 289; R. S. Sec. 3589.

[9] March 14, 1900, c. 41, Sec. 2, 31 Stat. 45; Dec. 23, 1913, c. 6, Sec. 7, 38 Stat. 258; Mar. 4, 1923, c. 252, Title I, Sec. 2, 42 Stat. 1457.

cates in exchange therefor.[10] Such certificates were also authorized to be issued against gold coin held in the Treasury. The first authorization provided that they may not "exceed twenty per centum beyond the amount of coin and bullion in the Treasury." In other words, for every one hundred dollars of gold coin or gold bullion held in the Treasury, there could have been issued one hundred and twenty dollars in gold certificates. Subsequent legislation dealing with gold certificates is discussed at page 21, *infra*, and is set forth in the Appendix, *infra*.

Gold certificates were formerly known as "yellowbacks", because of their color. They have been withdrawn from circulation since April 5, 1933, although the Federal Reserve banks may and do continue to hold them as reserves for Federal Reserve notes and deposits.

Gold certificates have been legal tender in payment of all debts since 1919,[11] and are the type of currency involved in the case at bar.

(*c*) SILVER CERTIFICATES

Silver certificates are a form of paper currency formerly issued only against silver dollars, now

[10] March 3, 1863, c. 73, Sec. 5, 12 Stat. 711; July 12, 1882, c. 290, Sec. 12, 22 Stat. 165; Mar. 14, 1900, c. 41, Sec. 6, 31 Stat. 47; May 26, 1906, c. 2558, 34 Stat. 202; Mar. 4, 1907, c. 2913, Sec. 1, 34 Stat. 1289; Mar. 2, 1911, c. 190, 36 Stat. 964; June 12, 1916, c. 142, 39 Stat. 225; May 29, 1920, c. 214, Sec. 1, 41 Stat. 654; R. S. Sec. 254.

[11] Dec. 24, 1919, c. 15, Sec. 1, 41 Stat. 370.

issued against silver dollars or bullion.[12] They have been in circulation since 1878. Most of the one-dollar bills in circulation are silver certificates.

(*d*) FEDERAL RESERVE NOTES

Federal reserve notes, authorized by the Federal Reserve Act as amended, are issued to Federal Reserve banks, through the Federal Reserve agents. They are covered by collateral as provided in the Federal Reserve Act and each bank was required to maintain a reserve in gold or gold certificates of not less than 40 percent of the amount of its notes in actual circulation. Federal Reserve notes are obligations of the United States.[13]

(*e*) NATIONAL BANK NOTES AND FEDERAL RESERVE BANK NOTES

National banks, ever since their first establishment during the Civil War, have been permitted to issue circulating notes secured by a like amount of bonds of the United States, the amount issuable by any bank being limited to the amount of paid-in capital of the bank.[14] Federal Reserve banks are authorized to issue Federal Reserve bank notes on the same basis,[15] except that their amount is

[12] Feb. 28, 1878, c. 20, Sec. 3, 20 Stat. 26; March 3, 1887, c. 362, 24 Stat. 509, 515.

[13] Dec. 23, 1913, c. 6, Sec. 16, 38 Stat. 265, 266; Sept. 7, 1916, c. 461, 39 Stat. 752, 754; June 21, 1917, c. 32, Sec. 7, 40 Stat. 236.

[14] Mar. 14, 1900, c. 41, Sec. 12, 31 Stat. 49; Oct. 5, 1917, c. 74, Sec. 2, 40 Stat. 342.

[15] Dec. 23, 1913, c. 6, Sec. 18, 38 Stat. 268.

not limited by the amount of paid-in capital of the bank as in the case of national bank notes. In order to provide an emergency currency the basis of issue for Federal Reserve bank notes was considerably enlarged by the Emergency Banking Act of March 9, 1933. National bank notes and Federal Reserve bank notes are obligations of the issuing bank and are redeemable at the United States Treasury.

All types of paper currency were made legal tender for all debts, public and private, including gold-clause obligations, by the Act of May 12, 1933, as amended and supplemented by Public Resolution No. 10, of June 5, 1933.

The redemption features, as they existed prior to the passage of the Emergency Banking Act of March 9, 1933, of the various types of currency above described appear in the following quotation from an official circular of the Treasury Department, dated January 26, 1927 (Sec IV, 7, 8, 9):

> 7. United States notes [16] and gold certificates [17] are redeemable in gold coin; Treas-

[16] Mar. 14, 1900, c. 41, Sec. 2, 31 Stat. 45; Dec. 23, 1913, c. 6, Sec. 7, 38 Stat. 258; Mar. 4, 1923, c. 252, Title I, Sec. 2, 42 Stat. 1457; 31 U. S. C. 408.

[17] Mar. 3, 1863, c. 73, Sec. 5, 12 Stat. 711, 31 U. S. C. 428; July 12, 1882, c. 290, Sec. 12, 22 Stat. 165; Mar. 14, 1900, c. 41, Sec. 6, 31 Stat. 47; May 26, 1906, c. 2558, 34 Stat. 202; Mar. 4, 1907, c. 2913, Sec. 1, 34 Stat. 1298; Mar. 2, 1911, c. 190, 36 Stat. 964; June 12, 1916, c. 142, 39 Stat. 225; May 29, 1920, c. 214, Sec. 1, 41 Stat. 654; 31 U. S. C. 429.

ury notes of 1890 in gold coin [18] or standard silver dollars; [19] and silver certificates [20] in standard silver dollars.

8. National-bank notes [21] and Federal reserve bank notes [22] are redeemable in lawful money of the United States by the Treasurer of the United States, but payments therefor in lawful money may be effected through the Federal reserve banks and branches. Federal reserve banks and branches will also receive national-bank notes and Federal reserve bank notes unfit for further circulation, and will make payment therefor in other forms of money, or by credit.

9. Federal reserve notes [23] are redeemable in gold by the Treasurer of the United States, and in gold or lawful money at any Federal reserve bank.

The Gold Reserve Act approved January 30, 1934, amended the Federal Reserve Act so as to provide that Federal Reserve notes "shall be re-

[18] See footnote 16.

[19] July 14, 1890, c. 708, Sec. 2, 26 Stat. 289; Mar. 14, 1900, c. 41, Sec. 2, 31 Stat. 45; Dec. 23, 1913, c. 6, Sec. 7, 38 Stat. 258; Mar. 4, 1923, c. 252, Title I, Sec. 2, 42 Stat. 1457; 31 U. S. C. 408.

[20] Feb. 28, 1878, c. 20, Sec. 3, 20 Stat. 26; Mar. 3, 1887, c. 362, 24 Stat. 515; 31 U. S. C. 405.

[21] June 20, 1874, c. 343, Sec. 3, 18 Stat. 123; Dec. 23, 1913, c. 6, Sec. 20, 38 Stat. 271; 12 U. S. C. 121; July 14, 1890, c. 708, Sec. 6, 26 Stat. 289; 12 U. S. C. 122; June 20, 1874, c. 343, Sec. 3, 18 Stat. 123; 12 U. S. C. 123.

[22] Dec. 23, 1913, c. 6, Sec. 18, 38 Stat. 268; 12 U. S. C. 445.

[23] Dec. 23, 1913, c. 6, Sec. 16, 38 Stat. 265; 12 U. S. C. 411.

deemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank." The Gold Reserve Act further provides: "Except to to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury, with the approval of the President, no currency of the United States shall be redeemed in gold." * * *

SUMMARY OF ARGUMENT

I.

Even if the Court of Claims has jurisdiction of this suit, the plaintiff is not entitled to recover. Gold certificates, if they may be regarded as contracts, which we deny, are not warehouse receipts for a specified quantity of gold but are monetary obligations. On January 17, 1934, contractual obligations could be liquidated by the payment of any legal-tender currency, and hence the defendant's obligation to the plaintiff, if contractual, was fully satisfied when he received legal-tender currency in exchange for his gold certificates. Title III of the Act of May 12, 1933, and the Joint Resolution of June 5, 1933, made all forms of currency legal tender for the payment of all debts.

The plaintiff has sustained no damage, since if he had received gold coin on January 17, 1934, he would have been obligated forthwith to surrender it to the Secretary of the Treasury and receive